

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop  
Additional Methods to Implement the  
California Renewables Portfolio Standard  
Program.

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Rulemaking 06-02-012  
(Filed February 16, 2006)

COMMENTS OF BEAR VALLEY ELECTRIC SERVICE,  
A DIVISION OF GOLDEN STATE WATER COMPANY (U913-E),  
ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE  
ANNE E. SIMON, ENTITLED DECISION AUTHORIZING USE OF  
RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE  
CALIFORNIA RENEWABLES PORTFOLIO STANDARD

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April 13, 2009

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Pursuant to Article 14 of the Commission's Rules of Practice and Procedure, Bear Valley Electric Service (BVES), a division of Golden State Water Company (U913-E), hereby submits its opening comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Anne E. Simon entitled Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard.<sup>1</sup>

BVES supported the authority to use tradable renewable energy credits (TREC)s the PD would authorize in supplemental comments BVES filed in this docket on September 12, 2008. BVES has consistently supported the use of TREC)s for compliance with the requirements of California's ambitious and challenging renewables portfolio standard (RPS).<sup>2</sup> The March 26, 2009 PD incorporates suggestions made by BVES, recognizing the unique characteristics of the small utilities. BVES is very grateful that

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<sup>1</sup> The PD was mailed on March 26, 2009. These comments are therefore timely.

<sup>2</sup> BVES filed post-workshop comments in this rulemaking on November 13, 2007 and, on November 18, 2008, BVES filed Comments on the October 29, 2008 PD.

this PD recognizes that its ratepayers would be better served by allowing as much RPS flexibility as possible. PD at p. 30. It is thus a welcome and encouraging step. BVES appreciates the opportunity to offer these comments.

Contract Approval.

The original PD did not mention the process small utilities should pursue for TREC contract approval. For multi-jurisdictional utilities, an advice letter would be required for TREC contract approval if the utility wished to recover the costs of TRECs. Oct. PD at 28.

As noted in its November 2008 Comments, BVES is required, as long as its price cap is in effect, to file an application for RPS contract approval. *See* D.08-05-029, at 25-26. BVES asked in its November Comments that it be able to use the simpler, less expensive, and speedier advice letter process the multi-jurisdictional utilities may use.

In footnote 90, on page 62 of the March 2009 PD, the Commission will explicitly grant the BVES request that it be permitted to use the advice letter process.

D.08-05-029 requires BVES to submit an application for approval of bundled energy purchases as long as there is a cap on its electricity charges. This requirement does not apply to TREC purchases. *Emphasis added.*

BVES appreciates that its suggestion has been accepted.

### Banking.

In D.03-06-071 the Commission stated that excess renewable procurement in one year should be allowed to be carried over to future years without limitations on time or quantity. “Such unlimited forward banking is consistent with the language of § 399.14(a)(2)(C), which allows excess procurement in one year to be applied to subsequent years.” D.03-06-071 at 43. *See also*, D.06-10-050, Attachment A, Rules for Reporting and Determining Compliance at 8: (“If eligible procurement is not used to meet the APT in the year in which it was procured, it may be reported as surplus procurement and may be banked and used to meet procurement targets in past or future years.” [Emphasis added.]) *See also* D.08-02-008, Appendix D, at 1, paragraph 2: (“Surpluses may be banked and applied in any year (past, present or future).”)

This PD, like the original mailed last year, would limit the period for holding RECs to three years. PD at 55. BVES submits the Commission should remain consistent with its prior decisions and permit TRECs to be banked without limitations.

The PD’s rationale is that the three-year limit “strikes an appropriate balance between maintaining market liquidity and discouraging hoarding of TRECs.” PD at 55. These concerns may warrant oversight, and a short-term limit for some market participants, such as the proposed three years; however, for a small utility the three-year limitation is an impediment. That is particularly so because a small utility is at a disadvantage as a buyer with sellers who prefer larger transactions. Small utilities cannot possibly hoard TRECs, and cannot affect liquidity in the TREC market. Given the Commission’s contract approval process, no harm to the TREC market can be expected

from utilities in general if they hold TRECs longer than three years. BVES requests that the PD be revised to state that the Commission may, in the process of contract approval, allow a period longer than three years.

#### STC REC-1.

BVES commented on the original PD that the clause in the proposed STC REC-1 could have a chilling effect on sellers, for it would require a seller to warrant RPS compliance into the future, saddling the seller with the risk of future, yet unknown changes in Commission decisions and legislation. The March 26, 2009 PD altered the text, but the problem remains embedded in STC REC-1. Sellers cannot be expected to ensure compliance with virtually unforeseeable regulatory or legislative TREC policy changes. The remedy of not declaring a default if the seller made “commercially reasonable” efforts at future compliance will be of little comfort to a seller and no remedy for a disappointed buyer.

BVES submits a warranty is needed, but it should not require a seller to warrant compliance into the future, subjecting the seller’s business to uncontrollable, unforeseeable regulatory and legislative risks, for which there will likely be no remedies. Otherwise the market in RECs will never be established for want of enough capable sellers. BVES recommends that the last clause “or any later modifications made by decision of this Commission or new legislation” on page 60 of the PD be deleted, and the corresponding clause of STC REC-1 be deleted, as well as the last sentence in Appendix C and Ordering Paragraph 25.

As required by Rule 14(b), an appendix setting forth proposed findings and conclusions is appended to these comments.

BVES thanks the Commission and its staff for the thoughtful work that went into the revised PD.

Dated: April 13, 2009

Respectfully submitted,

By /s/ Dennis W. De Cuir  
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## APPENDIX

to

THE COMMENTS OF BEAR VALLEY ELECTRIC SERVICE,  
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PORTFOLIO STANDARD

### Findings of Fact

No changes.

### Conclusions of Law

15. In order to allow multi-jurisdictional utilities to recover the reasonable costs of REC-only contracts procured solely for California RPS compliance, such contracts should be submitted for Commission approval via advice letter. [BVES may submit its TREC contracts for Commission approval via advice letter.](#)

## ORDER

### Paragraph 25

#### a. STC REC-1. Transfer of renewable energy credits

Seller and, if applicable, its successors, represents and warrants that ~~throughout the Delivery Term of this Agreement~~ the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, ~~and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent~~



~~legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.~~

8. In order to be used for RPS compliance, unless otherwise authorized by the Commission during contract approval, RECs may be retained in active sub-accounts in WREGIS for no more than three calendar years (inclusive of the year in which the electricity associated with the RECs was generated) after the electricity associated with the RECs was generated before being transferred to the WREGIS retirement sub-account of an RPS-obligated LSE.

## CERTIFICATE OF SERVICE

I, Denise Lynch certify:

I am employed in the City of Roseville, County of Placer, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 2999 Douglas Boulevard, Suite 325, Roseville, California 95661.

On April 13, 2009, I caused the following to be served:

COMMENTS OF BEAR VALLEY ELECTRIC SERVICE,  
A DIVISION OF GOLDEN STATE WATER COMPANY (U913-E),  
ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE  
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via electronic mail to all parties on the service list in R.06-02-012 who have provided the commission with an electronic mail address, and by First Class mail on ALJ Anne E. Simon, ALJ Burton Mattson and those persons on the service list who have not provided an electronic mail address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date above at Roseville, California.

/s/ Denise Lynch

Denise Lynch

SERVICE LIST R.06-02-012

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